HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 6208 (S/S) 2001
(Old no. 40963 of 1996.)

Kundan Singh Bisht S/o late Vishan Singh Bisht,
R/0 village Barenshwar (Jinkhola),
P.O. Matena, District Almora ---- Petitioner.

Vs.

1. State of U.P. through Secretary Education,
   Secretariat, U.P. Lucknow.
2. Director of Education Basic,
   U.P. Allahabad/Lucknow
3. Deputy Director Basic, Nainital.
4. Basic Shiksha Adhikari, Almora.

----Respondents.

Sri M.C. Kandpal, learned Senior Counsel for the petitioner,
Lt. Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.C. Kandpal, learned Sr. Counsel for the petitioner and learned Standing Counsel for the respondents.

2. By means of this writ petition, the petitioner has prayed for the following relief:-

i. to issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to allow the regular pay in the pay-scale ofRs. 1100-1710 on the principle of equal pay for equal work to the Assistant Teacher appointed under dying-in harness Rules, similar to other Assistant Teacher of primary schools.

ii. to issue a writ, order or direction in the nature of mandamus to the respondents to allow the Assistant Teacher appointed under dying-in-harness Rules, the annual increments in the pay and the consolidated fixed pay of Rs. 850/- may be

converted into regular pay-scale giving all the benefits, as are admissible to regular pay-scale.

iii. issue writ or direction in the nature of mandamus treating the Assistant Teacher appointed as regular teacher and give benefit of regular pay-scale of Rs. 1100-1710/- from their respective initial appointment.

iv to issue any other writ, order or direction which this court may deem fit and proper under the facts and circumstances of the case and to which the petitioner is entitled in law.

v. to award cost to the petitioner.

3. The writ petition was filed in the year 1996, but the respondents did not file counter affidavit till date.

4. The petitioner, who was appointed as Assistant Teacher on 08.05.1996 by the respondents under dying-in-harness Rules, has prayed that he may be paid regular salary as par with the teachers who are appointed on regular basis instead of paying Rs. 850/- per month, which is being paid to the petitioner.

5. Counsel for the petitioner has submitted that the petitioner is still in job and is getting Rs. 850/- per month, he may be paid pay scale as Assistant Teacher as par with the untrained teachers who have been appointed as Assistant Teacher on regular basis, as the petitioner was appointed under dying-in-harness Rules.

6. Since the appointment of the petitioner was made under dying-in-harness Rules, it is well settled law that appointment made under dying-in-harness Rules shall be treated as regular appointment and, as such, the incumbents are entitled to get salary as par with the regular employee.

7. In the circumstance, it will be proper and justified to direct the respondents that in case the petitioner has completed the training which is required for trained teachers, he shall be paid pay-scale of the teachers who have been appointed on regular basis as trained teachers and in case, he has not completed the training, he shall be paid the pay scale of Untrained Teacher.

8. With this direction, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

March 10,2006:
NCM: